

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal Action No. 5:07CR14
(STAMP)

KENNETH M. DAVIDSON,

Defendant.

**ORDER AFFIRMING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE**

On April 19, 2007, the defendant filed a motion to dismiss his indictment. Although the defendant is represented by CJA counsel, William R. Metzner, the motion was filed by the defendant and Milton Joseph Taylor, who was identified therein as the defendant's "Jailhouse Lawyer." On May 10, 2007, United States Magistrate Judge James E. Seibert issued a report and recommendation recommending that the defendant's motion to dismiss the indictment be denied. The magistrate judge informed the parties that if they objected to any portion of this report, they must file written objections within ten days after being served with copies of this report. No objections were filed.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. As to those portions of a recommendation to which no objection is made, a magistrate judge's findings and recommendation will be upheld

unless they are "clearly erroneous." See Webb v. Califano, 468 F. Supp. 825 (E.D. Cal. 1979). Because no objections were filed in this case, the Court reviews the report and recommendation for clear error.

Magistrate Judge Seibert found that the defendant's motion to dismiss his indictment was frivolous and without a basis in fact or law. This Court finds no clear error in the magistrate judge's recommendation that the motion to dismiss the indictment be denied.

Accordingly, this Court hereby AFFIRMS and ADOPTS the magistrate judge's report and recommendation. It is ORDERED that the defendant's motion to dismiss be DENIED.

Under Wright v. Collins, 766 F.2d 841, 845 (4th Cir. 1985), the defendant's failure to object to the magistrate judge's proposed findings and recommendation bars the defendant from appealing the judgment of this Court on the subject motion.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to the defendant and counsel of record herein.

DATED: August 29, 2007

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE